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**From:** Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]  
**Sent:** 7/7/2017 11:26:27 AM  
**To:** Shapiro, Mike [Shapiro.Mike@epa.gov]  
**Subject:** Re: From Tony Davis, AZ Star: Governor Ducey letter

Great! I'll also tee it up on Wednesday as part of our discussion on options for further state engagement. I plan to send a paper out on Tuesday.

Mindy

Sent from my iPhone

On Jul 6, 2017, at 10:23 PM, Shapiro, Mike <[Shapiro.Mike@epa.gov](mailto:Shapiro.Mike@epa.gov)> wrote:

Mindy,

Thanks, I would also support posting the letters.

Mike

Michael Shapiro  
Acting Assistant Administrator, Office of Water  
US EPA, 4101M  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202-564-5700

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**From:** Eisenberg, Mindy  
**Sent:** Thursday, July 06, 2017 5:58 PM  
**To:** Shapiro, Mike <[Shapiro.Mike@epa.gov](mailto:Shapiro.Mike@epa.gov)>  
**Subject:** RE: From Tony Davis, AZ Star: Governor Ducey letter

Unfortunately the response to the first question was changed by OPA and I didn't see it before they hit send. Here was Donna's original response (as blessed by Carrie):

## Ex. 5 Deliberative Process (DP)

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Mindy Eisenberg  
Acting Director, Oceans, Wetlands & Communities Division  
Office of Wetlands, Oceans and Watersheds  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW, mailcode 4502T  
Washington, DC 20460  
(202) 566-1290  
[eisenberg.mindy@epa.gov](mailto:eisenberg.mindy@epa.gov)

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**From:** Shapiro, Mike  
**Sent:** Thursday, July 06, 2017 5:53 PM  
**To:** Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>  
**Subject:** FW: From Tony Davis, AZ Star: Governor Ducey letter

Hi Mindy,

## Ex. 5 Deliberative Process (DP)

Mike

Michael Shapiro  
Acting Assistant Administrator, Office of Water  
US EPA, 4101M  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202-564-5700

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**From:** Jones, Enesta  
**Sent:** Thursday, July 06, 2017 5:15 PM  
**To:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>  
**Cc:** Drinkard, Andrea <[Drinkard.Andrea@epa.gov](mailto:Drinkard.Andrea@epa.gov)>; Dennis, Allison <[Dennis.Allison@epa.gov](mailto:Dennis.Allison@epa.gov)>; Wilcox, Jahan <[wilcox.jahan@epa.gov](mailto:wilcox.jahan@epa.gov)>; Graham, Amy <[graham.amy@epa.gov](mailto:graham.amy@epa.gov)>; Lynn, Tricia <[lynn.tricia@epa.gov](mailto:lynn.tricia@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Shapiro, Mike <[Shapiro.Mike@epa.gov](mailto:Shapiro.Mike@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Goodin, John

<Goodin.John@epa.gov>

**Subject:** Re: From Tony Davis, AZ Star: Governor Ducey letter

Will do. Thanks all!

**Enesta Jones**

U.S. EPA

Office of Media Relations

Office: 202.564.7873

Cell:

Ex. 6 Personal Privacy (PP)

**"The root of all joy is gratefulness."**

On Jul 6, 2017, at 5:14 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

The final response is below – Enesta, please send this to the reporter. Thank you.

1) Gov. Douglas Ducey of Arizona wrote this letter last month to EPA, asking Administrator Pruitt to make it clear in his WOTUS revisions and rewrite that the states have authority to determine what waters are regulated under the Clean Water Act within non-tribal state boundaries. Enesta, I spoke to the Michigan Department of Environmental Protection today, and a staffer there told me that Michigan has delegated authority from EPA to run its own 404 permitting program and also makes determinations about which waters are regulated and deemed "jurisdictional" under the Clean Water Act. The staffer, Assistant Water Resources Division Director Kim Fish, told me that if a state wants to make decisions about which waters are regulated under CWA, it would also have to take over and run its own 404 permitting program. Is that correct?

While the Army Corps of Engineers makes the majority of determinations as to whether a particular water is a "water of the United States," EPA has the ultimate administrative authority to determine the scope of "waters of the United States." Michigan operates the CWA 404 permit for discharge of dredged or fill material and determines permitting under the state law, with the exception of waters, which the state reserves to the Corps.

2. I have been told by environmentalists that this letter from Ducey was part of a package of letters to EPA on WOTUs from other governors and Indian tribes around the US, and that these letters were not publicly releasable in the way that written public comments on proposed EPA regulations are publicly releasable. Is that correct? If so, why were these letters not released (I obtained this one from a source not in EPA).

The letter was one of many received as part of the pre-proposal consultations. EPA is reviewing the submissions and will provide summaries of them through the Federalism process of the proposed rule.

3. Is there now a public process for the public to make written or emailed comments on Administrator Pruitt's planned repeal of the WOTUS rules? Has that public comment period begun yet? If so, how does one make comments on this proposed action?

The comment period for the proposed rule will be open to the public when the proposed rule is published in the federal register.

Sent from my iPhone

On Jul 6, 2017, at 3:22 PM, Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)> wrote:

Hi Allison – Can you please work with the OW water folks to get answers to these questions and send me a draft to review? Enesta, in the meantime, can you please go back to Tony and tell him we are working on a response and will get back to him shortly?

I talked with Sarah Greenwalt, and she said the OW staff can be very helpful here.

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**From:** Jones, Enesta  
**Sent:** Thursday, July 6, 2017 1:57 PM  
**To:** Press <[Press@epa.gov](mailto: Press@epa.gov)>  
**Subject:** AMY/NANCY/JAHAN: From Tony Davis, AZ Star: Governor Ducey letter

Reporter has now called me. Is someone handling?

Begin forwarded message:

**From:** "Davis, Tony" <[TDavis@tucson.com](mailto: TDavis@tucson.com)>  
**Date:** July 6, 2017 at 12:25:47 PM EDT  
**To:** "[jones.enesta@epa.gov](mailto: jones.enesta@epa.gov)" <[jones.enesta@epa.gov](mailto: jones.enesta@epa.gov)>  
**Subject:** From Tony Davis, AZ Star: Governor Ducey letter

Enesta,

Here are my questions. Please respond by tomorrow. I'm keeping the number of questions small in hopes of getting a quick response.

1)Gov. Douglas Ducey of Arizona wrote this letter last month to EPA, asking Administrator Pruitt to make it clear in his WOTUS revisions and rewrite that the states have authority to determine what waters are regulated under the Clean Water Act within non-tribal state boundaries.

Enesta, I spoke to the Michigan Department of Environmental Protection today, and a staffer there told me that Michigan has delegated authority from EPA to run its own 404 permitting program and also makes determinations about which waters are regulated and deemed "jurisdictional" under the Clean Water Act.

The staffer, Assistant Water Resources Division Director Kim Fish, told me that if a state wants to make decisions about which waters are regulated under CWA, it would also have to take over and run its own 404 permitting program.

Is that correct?

2)I have been told by environmentalists that this letter from Ducey was part of a package of letters to EPA on WOTUs from other governors and Indian tribes around the US, and that these letters were not publicly releasable in the way that written public comments on proposed EPA regulations are publicly releasable. Is that correct? If so, why were these letters not released (I obtained this one from a source not in EPA).

3)Is there now a public process for the public to make written or emailed comments on Administrator Pruitt's planned repeal of the WOTUS rules? Has that public comment period begun yet? If so, how does one make comments on this proposed action?

Thank you very much,

Tony Davis

Environmental reporter

Arizona Daily Star

520-806-7746 o

Ex. 6 Personal Privacy (PP)

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